

Hearing Date: April 22, 2020

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Attorney for Debtors

**UNITED STATES BANKRUPTCY
EASTERN DISTRICT OF NEW YORK**

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In Re:

**NICODEMUS JOSHUA MILLER and
KIM DEMETRO**

**Chapter 7
Case No. 1-19-47801-nhl**

Debtor.

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**DEBTORS' OBJECTION TO
OF MOTION FOR RELIEF FROM AUTOMATIC STAY**

TO THE HONORABLE NANCY HERSHEY LORD
UNITED STATES BANKRUPTCY JUDGE

Nicodemus Joshua Miller and Kim Demetro Debtors in the above-captioned matter (the "Debtors"), submit this objection (the "objection") to Michael Mesheriakov's Motion for Relief from the Automatic Stay to the extent that it seeks immediate relief from stay.

1. Michael Mesheriakov (hereinafter "Mesheriakov") is an unsecured creditor and the owner and landlord of the premises where Debtors resides.
2. Debtors entered into a residential rental lease with Mesheriakov for a monthly rent of \$4,400.00 commencing September 1, 2018 and expiring on August 31, 2021.
3. Mesheriakov commenced a nonpayment action on or about August 2019 and was subsequently granted a judgment of possession and warrant of eviction against Debtors.

4. On December 31, 2019, Debtors filed a voluntary Chapter 7 Bankruptcy Petition pursuant to title 11 of the Bankruptcy Code. An automatic stay was entered pursuant §362 of the Code preventing Mesheriakov from taking any further action to evict debtors from the premises. Thereafter, the debtors complied with Section 362(l)(1) of the Bankruptcy Code and Administrative Order No. 644, in that the debtors delivered to the Clerk of Court a certified check made payable to Michael Mesheriakov in the amount of \$ 4,450.00 as rent during the 30-day period after filing the petition.
5. Mesheriakov filed this motion requesting that the stay be lifted. Debtors opposes the motion to the extent that it seeks immediate relief from stay. Debtors request that repossession through the warrant of eviction not take place for at least six months after any order from this court.
6. It is noteworthy that even if this court were to order the automatic stay to be lifted, Mesheriakov cannot take any steps immediately pursuant to such order in light of Gov. Mario Cuomo Executive Order stating “[T]here shall be no enforcement of either eviction of any tenant residential or commercial, or a foreclosure of any residential or commercial property for a period of ninety days.” Once the eviction moratorium has been lifted, any eviction proceedings may be extended for another six months if the NYS Tenant Safe Harbor Act¹ is passed.
7. During this current health crisis, the housing industry has been and will continue to be greatly affected. Debtors understand that they will have to pay rent wherever they go

¹ The Tenant Safe Harbor Act is legislation introduced by NYS Senators Brad Hoylman and Liz Krueger and Assemblyman Jeffrey Dinowitz intended to prevent a “tidal wave” of evictions during the COVID-19 crisis. The proposed Act would prohibit landlords from evicting tenants for non-payment of rent that accrued during the current State of Emergency. *The New York State Senate Press Release COVID-19 Eviction SD27, Tenants Rights, April 7, 2020.*

and is willing to negotiate a new lease agreement with Mesheriakov. Debtor Nicodemus J. Miller is currently a home health aide for his parents, who reside with him. His elderly father suffers from serious medical issues which requires him to use an oxygen machine thereby making it difficult to find a new home.

8. As the motion points out, Mesheriakov's judgment of possession did not create a lien and the rental sum owed is subject to discharge in bankruptcy court. If the pre-petition debt is discharged and if future legislations makes it difficult to commence further eviction proceedings Debtors proposes to that the parties negotiate a short-term rental agreement until such time that the parties feel they can return to some financial normalcy.

WHEREFORE, the Debtors respectfully request that the Court sustain the objection to the extent requested and grant the Debtors such other and further relief as may be just.

Dated: April 15, 2020
New York, New York

/s/ Sharon A. Toussaint
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AFFIRMATION OF SERVICE BY MAIL

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

I, SHARON A. TOUSSAINT, an attorney duly admitted to practice law in the courts of the State of New York, affirms the truth of the following under the penalties of perjury:

On April 15, 2020, I served the within DEBTORS' OBJECTION TO MOTION FOR RELIEF FROM AUTOMATIC STAY by email transmission, addressed to each of the following persons at the last known address set forth after each name:

TO: alla@kachanlaw.com
 Alla Kachan, Esq.
 Law Office of Alla Kachan, P.C.
 3099 Coney Island Avenue, 3rd Fl
 Brooklyn, NY 11235

Dated: New York, New York
 April 15, 2020

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